

## PART I - GENERAL PROVISIONS

### 1.01 Introduction and Purpose

#### (1) Introduction

These regulations are promulgated by the Town of Chatham Conservation Commission pursuant to the authority granted to it under Section 7 of the Town of Chatham Wetland Protection Bylaw (herein after referred to as the "Bylaw"). These regulations shall complement the Bylaw, and shall have the force of law upon their effective date.

#### (2) Purpose

The Bylaw sets forth a public review and decision making process by which activities having an impact or cumulative effect upon Areas Subject to Protection under the Bylaw are to be regulated in order to ensure the protection of the following interests:

- public water supply
- private water supply
- groundwater and groundwater quality
- water quality in the numerous ponds of the Town
- flood control
- erosion and sedimentation control
- storm damage prevention
- water pollution prevention
- wildlife and wildlife habitat
- fisheries
- shellfish
- aquaculture
- marshland and eelgrass beds
- marine and shoreline ecology
- rare and endangered species habitat, both animal and plant
- passive recreational enjoyment of wetlands and adjoining uplands

The purpose of these regulations is to define and clarify that process by establishing standard definitions and uniform procedures by which the Chatham Conservation Commission may carry out its responsibilities under the Bylaw. These regulations also incorporate performance standards to govern applications for new shoreline structures. These standards are consistent with the Pleasant Bay Resource Management Plan approved by Special Town Meeting in November 1998 and the Stage Harbor Management Plan. Both are state approved management plans.

## 1.02 Statement of Jurisdiction

- (1) Areas Subject to Protection Under the Bylaw. The following areas are subject to protection under the Bylaw:
  - (a) Any freshwater wet land, coastal wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, beach, dune, or flat;
  - (b) Any land within 100 feet of any of the areas set forth in Section 1.02 (l)(a) above;
  - (c) Any lake, river, pond, stream estuary, watercourse, or the ocean;
  - (d) Any land under any of the water bodies set forth in Section 1.02 (1)(c) above;
  - (e) Any land within 100 feet of the water bodies set forth in Section 1.02 (1)(c) above;
  - (f) Any land within 200 feet of a river;
  - (g) Any land subject to flooding or inundation by groundwater, surface water, or tidal action;
  - (h) Any land within 100 feet of any land subject to flooding or inundation as set forth in Section 1.02 (1)(g) above;
  - (i) Any land subject to coastal storm flowage;
  - (j) Any land within 100 feet of land subject to coastal storm flowage;
  - (k) Any land or waters within the Pleasant Bay ACEC.
- (2) Activities Subject to Regulation Under the Bylaw.
  - (a) Any activity proposed or undertaken which will constitute removing, filling, dredging, building upon, or altering any area specified in Section 1.02 (1) Is subject to regulation under the Bylaw and requires the filing of an Application for Permit.
  - (b) Any activity proposed or undertaken outside the areas specified in Section 1.02 (1) above shall not be subject to regulation under the Bylaw unless, in the judgement of the Conservation Commission, said activity will result or has resulted in the removing, filling, dredging, building upon or altering

an area specified in Section 1.02 (1) above.

- (c) Any person who wishes to know whether or not a proposed activity or an area is subject to the Bylaw may in writing request a determination from the Conservation Commission. Such a Request for Determination of Applicability shall be submitted pursuant to Section 1.05 of these regulations.

### 1.03 General Provisions Concerning Burden of Going Forward and Burden of Proof

- (1) The Applicant shall have the burden of going forward by providing at least some credible evidence from a competent source in support of all matters asserted by the Applicant in accordance with his or her burden of proof pursuant to Section 1.03 (2) below.
- (2) The Applicant shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not harm or adversely impact the interests protected by this Bylaw. Adversely impact in this context includes the diminution of the quality, productivity, quantity or vitality of the resource. Failure to meet the Burden of proof shall be cause for the Commission to deny the Application for Permit along with any work or activity proposed therein.

### 1.04 Definitions

Abutter means the owner of a property within 100 feet of the property lines of the site on which the project is proposed which may be over roadways, waterbodies, or waterways. The current property owner and mailing address shall be as listed in the most current records of the Town as obtained from the Assessors' Department.

Activity means any form of draining, dumping, dredging<sup>1</sup> damming, discharging, excavating, filling or grading; the erection, reconstruction or expansion of any buildings or structures; the driving of pilings or sea walls; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of ground or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; and any other changing of the physical characteristics of land, or of the physical, biological or chemical characteristics of water.

Adjacent Upland Resource - See Part IV, section 4.01(2)

Administrative Review means a review by the Commission or its agent pursuant to a written request to the Conservation Commission to determine whether or not an additional filing will be necessary to perform work of a minor nature in an area subject to protection under section 37005 of the Bylaw or, if not, whether to approve such work. – See Policy #04-102

Alter means to change the condition of any Area Subject to Protection Under the Bylaw. The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this Bylaw:

- (a) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
- (b) Changing of preexisting drainage characteristics<sup>1</sup> flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- (c) Drainage or other disturbance of water level or water table;
- (d) Dumping, discharging or filling with any material;
- (e) Placing of fill, or removal of material;
- (f) Driving of piles, erection of buildings, or structures of any kind;
- (g) Placing of obstructions or objects in water (other than boats, moorings, fish or shellfish traps, pens or trays used in conjunction with aquaculture, or aids to navigation);
- (h) Destruction of plant life including cutting of trees;
- (i) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- (j) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Aquaculture means the growing of aquatic organisms under controlled conditions including but not limited to fin fish, shellfish, amphibians, reptiles, and seaweeds and includes the Town's shellfish propagation program.

Area of Critical Environmental Concern (ACEC) means an area so designated by the Commonwealth under the Massachusetts Area of Critical Environmental Concern Program established in 1975 by the Secretary of Environmental Affairs as authorized and directed by the Legislature in order to identify and designate areas of critical

environmental concern and to develop policies and regulations for their protection and use.

Bank (coastal) - See Section 2.05(2)

Bank (inland) - See Section 3.01 (2)(a)

Beach (barrier) - See Section 2.04(2)

Beach (coastal) - See Section 2.02(2)(a)

Beach (inland) - See Section 3.01 (synonymous with unvegetated inland bank)

Best Available Measures means the most up-to-date technology or the best designs, measures or engineering practices that have been developed and that are commercially available.

Best Management Practice (BMP) means structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to protect the interests of the Bylaw.

Best Practical Measures means technologies, designs, measures, or engineering practices that are in general use to protect like or similar interests.

Bog - See Section 3.02 (2).

Bordering means touching.

Boundary means the boundary of Area Subject to Protection Under the Bylaw.

Buffer Strip or Vegetated Buffer Strip - See Section 4.01(2)

Bylaw refers to Chapter 37 of the Chatham Town Code, the Chatham Wetlands Protection Bylaw.

Certificate of Compliance means a written determination by the Conservation Commission that the proposed work or a portion thereof has been completed in accordance with a pertinent Permit.

Coastal Engineering Structure means, but is not limited to, any bulkhead, revetment, sea wall, gabions, sand bags, marine mattress, breakwater, rip-rap, groin, jetty or other structures intended to prevent or alleviate storm damage, tidal action, wave action, littoral flow or erosion.

Commission means Chatham Conservation Commission.

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Conditions means those requirements set forth in a written Permit issued by the Conservation Commission for the purpose of permitting, regulating or prohibiting any activity that removes, fills, dredges, builds upon, or alters an Area Subject to Protection Under the Bylaw.

Conservation Agent means the duly authorized representative of the Commission, having the authority to carry out certain functions of the Commission. These shall include, but not be limited to, carrying out site visits and inspections for compliance, determination of application completeness, administrative review of minor projects, the issuance of cease and desist orders, and the issuance of non-criminal dispositions pursuant to Chapter 1 §1013 of the General Bylaw.

Conservation Commission means that body comprised of members lawfully appointed pursuant to M.G.L. c.40, s.8C.

Creek means the same as a stream.

Date of Issuance means the date a permit<sup>1</sup> determination, or a certificate of compliance is mailed, as evidence by a postmark, or the date it is hand delivered.

Date of Receipt means the date of delivery to an office, home or usual place of business by mail or hand delivery.

Department means Massachusetts Department of Environmental Protection (DEP).

Determination (of Applicability) means a written finding by the Commission as to whether a site or the activity proposed thereon is subject to the jurisdiction of the Bylaw.

Dredge means to deepen, widen or excavate, either temporarily or permanently.

Drought means any period of four or more months during which the average rainfall for each month is 50% or less of the ten year average for that same month, or as declared by the Massachusetts Drought Management Task Force or equivalent state authority.

Dock means an entire structure which is intended to provide water access and includes, but is not limited to, any pier, wharf, walkway, catwalk, bulkhead or float and any part thereof including pilings, ramps, walkways, float and/or tie-off pilings.

Dune means coastal dune - See Section 2.03 (2).

Erosion Control means the prevention or reduction of the detachment or movement of soil or rock fragments by water, wind, ice and/or gravity.

Estuary means:

- (a) any area where fresh and salt water mix and tidal effects are evident; or
- (b) any partially enclosed coastal body of water where the tide meets the current of any stream or river.

Extension Permit means a written extension of time within which the authorized activity shall be completed.

Fill means to deposit any material so as to raise an elevation, either temporarily or permanently.

Fisheries and/or Marine Fisheries means, (1) the fish and shellfish resource itself, including all fish and shellfish found in fresh, salt or brackish waters and any organisms including plants that make up part of the food chain of such animals regardless of their commercial value and/or (2) the recreational or commercial catching of fish or shellfish from the ocean or from fresh water bodies.

Flat (tidal) - See Section 2.02 (2)(b).

Flood Control means the prevention or reduction of flooding and flood damage.

Freshwater Wetlands - See Section 3.02 (2).

Ground Water Supply means water below the earth's surface in the zone of saturation.

Interests means the wetland values (collectively, the "interests protected by this bylaw") specified in Section 37001 of the Bylaw and Section 1.01 (2) of these regulations.

Issuing Authority means the Conservation Commission.

Lake means any open body of fresh water with a surface area of 10 acres or more and includes Great Ponds.

Land Containing Shellfish - See Section 2.08 (2)(a).

Land Subject to Coastal Storm Flowage means land subject to any inundation caused by coastal storms up to and including that caused by the 100-year storm, surge of record or storm of record, whichever is greatest.

Land Subject to Flooding or Inundation by groundwater or surface water - See

Section 3.04 (1) and Section 3.05 (1).

Land Subject to Flooding or Inundation by Tidal Action means land affected by the periodic rise and fall of a coastal water body, including spring and high course tides.

Land Under Water Bodies means the bottom of or land under the surface of the ocean or any lake, river, pond, stream, estuary or watercourse. See Section 2.07, Section 2.09, and Section 3.03 for further definition.

Majority means more than half of the members of the Conservation Commission then in office.

Marsh - See Section 2.06 and Section 3.02 for definitions of salt and fresh marshes.

Naturalized Vegetation means established vegetation that has been allowed to grow without human interference such as pruning, removal of undergrowth, removal of leaf litter, or active cultivation and that, because of its attributes, provides wildlife cover or nesting habitat or serves as significant food source or provides erosion control.

No Disturb Zone – See Part IV, section 4.01 (2)

Notice of Intent means the written application filed by any person intending to remove, fill, dredge, build upon, or alter an Area Subject to Protection under the Massachusetts Wetland Protection Act, M.G.L. c. 131, s.40 and/or the Bylaw.

Obstructions or Objects in Water means but is not limited to dams, weirs, sluiceways, jetties, groins, breakwaters, piers, docks, sea walls, bulkheads, pilings, dolphins, marine railways, slips, out haul posts, or floats.

Ocean means the Atlantic Ocean and all contiguous waters subject to tidal action.

Order means an Order of Conditions, Superseding Order or Final Order, whichever is applicable, issued pursuant to M.G.L. c. 131, s.40 and/or the Bylaw.

Order of Conditions means the document issued by a conservation commission containing conditions which regulate or prohibit an activity under M.G.L. c. 131, s. 40 and/or the Bylaw.

Out Haul means a system used for hauling dinghies or other small vessels to and from the water and the shore and is commonly a set of posts or pipes with lines & pulleys installed in the intertidal area.

Party to any proceeding means the Applicant, the Conservation Commission and, pursuant to Section 1.05, may include the owner of the site, any abutter, any

person aggrieved, any ten residents of the town where the land is located and any ten persons pursuant to M.G.L. c. 30A, s. 10A.

Passive Recreation means recreational activities, which have no significant adverse impact on the natural environment, and are consistent with the rules and regulations promulgated by the Commission to achieve the purposes of the Bylaw. Passive recreation includes any leisure activity and includes, but is not limited to the following: shellfishing, hunting, boating, swimming, walking, photography, birdwatching, and aesthetic enjoyment.

Pier means the same as dock.

Permit means the document issued by the Commission containing conditions, which regulate or prohibit an activity under the Town of Chatham Wetlands Protection Bylaw, Sections 37001-37013. The Commission in an appropriate case may combine the permit or other action on an application issued under the Bylaw with the Order of Conditions issued under the Wetlands Protection Act, M.G.L. c. 131, s. 40.

Person Aggrieved means any person who, because of an act or failure to act by the issuing authority, may suffer an injury in fact which is different either in kind or in magnitude from that suffered by the general public and which is within the scope of the interests identified in the Bylaw. Such person must submit in writing sufficient facts to allow the Conservation Commission to determine whether or not the person is in fact aggrieved.

Plans means such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Conservation Commission to describe the site and the activity; to determine the applicability of the Bylaw; or to determine the impact of the proposal upon the interests identified in the Bylaw.

Pleasant Bay Area of Critical Environmental Concern (ACEC) means the Bay, its associated islands and barrier beaches, its watershed and includes the area 100 feet landward of the 10ft elevation (NGVD); in Chatham the ACEC runs from Jackknife Harbor south to Allen's Point, and the watershed which encompasses Lovers Lake, Stillwater Pond, and Mill Pond (South Chatham).

Pond (coastal) means Salt Pond - See Section 2.07 (2).

Pond (inland) means any open body of fresh water, either naturally occurring or man-made by impoundment, which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, extended drought shall mean any period of four or more months during which the average rainfall for each month is 50% or less of the ten year average for that same month. Basins or lagoons which are part of waste water treatment plants shall not

be considered ponds, nor shall swimming pools or other impervious man-made retention basins.

Prevention of Pollution means the prevention or reduction of contamination of surface or groundwater.

Private Water Supply means any source or volume of surface or ground water demonstrated to be in any private use or demonstrated to have a potential for private use, including ground or surface water in the zone of contribution around a private well.

Protection of Fisheries means the protection of the capacity of an area subject to protection under the Bylaw:

- (a) to prevent or reduce contamination or damage to fish;
- (b) to serve as their habitat and nutrient source;
- (c) to maintain productivity, which shall include the ability to take fin fish;
- (d) to prevent loss of habitat.

Fish includes all species of fresh water and saltwater fin fish.

Protection of Land Containing Shellfish means protection of the capacity of an area subject to protection under the Bylaw:

- (a) to prevent or reduce contamination or damage to shellfish;
- (b) to serve as their habitat and nutrient source;
- (c) to maintain productivity, which shall include the ability to take shellfish;
- (d) to prevent loss of habitat.

Shellfish includes all species of freshwater and saltwater shellfish.

Public Water Supply means any source or volume of surface or ground water demonstrated to be in public use or approved for water supply pursuant to M.G.L. c. 111, § 160 by the Division of Water Supply of the DEP or shown to have a potential for public use, in addition to all surface and groundwater in zones of contribution.

Quorum means the majority of the duly appointed members of the Conservation Commission that when duly assembled is legally empowered to transact business.

Rare and Endangered Species means without limitation, all vertebrate and invertebrate animal species and plant species, including their habitat, which are listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries & Game, regardless of whether the site in which they occur has been previously identified by the Division.

Remove means to take away any type of material, thereby changing an elevation, either temporarily or permanently.

Request for Determination of Applicability means a written request made by any person to the Conservation Commission for a determination as to whether a site or the proposed activity thereon is subject to the Bylaw.

Resource Area is synonymous with Area Subject to Protection under the Bylaw, each one of which is enumerated in Section 1.02 (1) of these regulations.

River means a natural flowing body of water that empties to any ocean, lake or other river and which flows throughout the year, except in drought conditions.

Riverfront Area means the protected resource area of a river or perennial stream and is measured 200 feet from the mean annual high water line.

Salt Marsh - See Section 2.06 (2)(a).

Sedimentation Control means the prevention or reduction of the collection or concentration of sand, soil or rock fragments by the action of water, wind, ice or gravity.

Significant means plays a role. A resource area is significant to an interest identified in the Bylaw when it plays a role in the provision or protection, as appropriate, of that interest.

Spring Tides means those tides which occur with new and full moons and which are perceptibly higher and lower than other tides.

Storm Damage Prevention means the prevention of damage caused by water from storms, including, but not limited to; erosion and sedimentation; damage to vegetation, property or buildings; or damage caused by flooding, waterborne debris or waterborne ice.

Stream means a body of running water, including brooks and creeks, which moves in a definite channel in the ground due to hydraulic gradient. A portion of a stream may flow through a culvert or beneath a bridge. A stream may be intermittent (i.e., does not flow throughout the year).

Swamp - See Section 3.02 (2).

Vegetated Wetlands - See Section 3.02 (2).

Watercourse means a stream wholly or partially man-made.

Wet Meadow - See Section 3.02 (2).

Wildlife Habitat means areas having plant community composition and structure, hydro logic regime, or other characteristics sufficient to provide shelter, nutrient sourcing, growing conditions, nesting or breeding sites conducive to the propagation and preservation of wildlife.

Wildlife means any non domesticated native mammal, bird, reptile, amphibian, fish, mollusk, plant, arthropod or other invertebrate other than a species of the Class Insecta which has been determined by the Commission to constitute a pest whose protection under the Bylaw would be a risk to humans.

Work means the same as activity.

## 1.05 Procedures

### (1) Time Periods

All time periods of ten days or less specified in the Bylaw and these regulations shall be computed using business days only. In the case of a determination or Application for Permit such period shall commence on the first day after the date of issuance and shall end at the close of business on the tenth business day thereafter. All other time periods specified in the Bylaw and these regulations shall be computed on the basis of calendar days, unless the last day falls on a Saturday. Sunday or legal holiday, in which case the last day shall be the next business day following.

### (2) Actions by Conservation Commission

Where the Bylaw states that a particular action (except receipt of a request for Determination or Application for Permit) is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of the members then in office. Where the Bylaw states that a permit or notification shall be issued by the Conservation Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign said permit or notification, provided they met pursuant to the open meeting law, M. G.L. c. 39, §§ 23A-23C, when voting on the matter.

Where the Bylaw states that the Conservation Commission is to receive a request or notice, Conservation Commission means a member of the Conservation Commission or an individual designated by the Conservation Commission to receive such request or notice.

(3) Determinations of Applicability

(a) Requests for Determination of Applicability

1. Any person who desires a determination as to whether the Bylaw applies to a site or to an activity that may affect an Area Subject to Protection Under the Bylaw, may submit to the Commission by certified mail or hand delivery a Request for Determination of Applicability form.
2. Any person filing a request for determination with the Commission at the same time shall give written notice thereof, by certified mail or hand delivery, to all abutters according to the most recent records of the Assessors, including those across a traveled way, and/or waterway or body of water, and to all other persons as the Commission shall in writing require. The list of abutters shall be certified by the Chatham Tax Assessors' office and submitted with the form. The notice shall enclose a copy of the request with plans, or shall state where copies may be examined and obtained by abutters.
3. When a person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request and the applicant shall supply the Commission with the name and current address of the owner.

(b) Determination of Applicability

1. Within 21 days after date of receipt of a Request for Determination of Applicability, the Commission shall hold a public hearing on the Request. Notice of the time and place of the public hearing at which the Determination will be made shall be given by the Commission at the expense of the person making the Request not less than five days prior to such hearing, by publication in a newspaper of general circulation in the Town, and by mailing a notice to the person making the Request and to the owner if other than the applicant. Notice shall also be give in accordance with the open meeting law, M.G.L. c. 39, Sec. 23B.
2. At the public hearing, the Commission will determine:
  - a. Positively: that the area and the activity proposed thereon are

subject to the jurisdiction of the Bylaw and that the activity is deemed to affect one or more of the interests protected in the Bylaw.

- b. Negatively: that the area in which the proposed activity is to take place is not within the jurisdiction of the Bylaw or that the proposed activity is deemed not to affect one or more of the interests protected by the Bylaw.
3. The Determination shall be signed by a majority of the Commission and shall be sent by the Commission to the person making the Request and the owner if other than the applicant within 21 days of the close of the public hearing or any continuance thereof.
4. A Determination shall be valid for three years from date of issuance.
5. In the event of a positive Determination, an Application for Permit shall be filed and all of the procedures set forth in Section 1.05 (4) shall apply.

(4) Application for Permits

- (a) Any person who proposes to do work that will remove, fill, dredge, build upon or alter any Area Subject to Protection Under the Bylaw shall submit an Application for Permit and other application materials in accordance with the appropriate submittal requirements.
- (b) The Commission in an appropriate case may accept as the application and plans under this Bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L. c. 131, Sec. 40.
- (c) Any person filing an Application for Permit with the Commission under the Bylaw at the same time shall give written notice thereof, by certified mail or hand delivered, to all abutters according to the most recent records of the assessors, including those across a traveled way, and/or a waterway or waterbody, and to all other persons as the Commission shall in writing require. The list of abutters shall be certified by the Chatham Tax Assessors' office and submitted with the application. The notice shall enclose a copy of the application with plans, or shall state where copies may be examined and obtained.
- (d) When a person filing an application is other than the owner, the notice of the hearing and the findings themselves shall be sent by the Commission to the owner as well as to the person filing the application, and the applicant shall supply the Commission with the name and current address of the owner.

- (e) Upon receipt of the application materials referred to in subsection (4)(a) above the Conservation Commission shall issue a file number. The designation of a file number shall not imply that the plans and supporting documents have been judged adequate for the issuance of a Permit but only that copies of the minimum submittal requirements have been filed.
  - (f) In the event that only a portion of a proposed project or activity lies within an Area Subject to Protection Under the Bylaw, all aspects of the project must be described in detail; provided, also that in such circumstances the Application for Permit shall also contain description and calculation of peak flow and estimated water quality characteristics of discharge from a point source (both closed and open channel) when the point of discharge falls within an Area subject to Protection Under the Bylaw.
  - (g) Notwithstanding the foregoing, when the Commission has determined that an activity outside the Areas Subject to Protection Under the Bylaw has in fact altered an Area Subject to Protection Under the Bylaw, it may require such plans, supporting calculations and other documentation as are necessary to describe the entire activity.
  - (h) An Application for Permit may be rejected by the Commission if:
    - 1. The filing is deemed incomplete; or
    - 2. Zoning review has not been completed by the Zoning Agent; or
    - 3. A Special Permit or Variance from the Zoning Board of Appeals is required and has not been obtained; or
    - 4. A Board of Health permit has not been applied for.
- (5) Public Hearings on Applications for Permit
- (a) A public hearing on an Application for Permit shall be held by the Commission within 21 days of receipt of the minimum submittal requirements and shall be advertised at the expense of the applicant five working days prior to the hearing in a newspaper of general circulation in the Town and in accordance with the requirements of the open meeting law, M.G.L. c. 39, Sec. 23B. Notice of the hearing shall be mailed by the Commission to the applicant and to the owner if other than the applicant.
  - (b) The Commission in an appropriate case may combine its hearing under the Bylaw with the hearing conducted under the Wetlands Protection Act, M.G.L. 131, sec. 40.

(c) Public hearings may be continued as follows:

1. without the consent of the applicant to a date certain, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, receipt of information and plans required of the applicant or deemed necessary by the Commission in its discretion or receipt of comments and recommendations of other local or state boards and officials; or
2. with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
3. with the consent of the applicant for a period not to exceed 21 days after the submission of a specified piece of information or the occurrence of a specified action. The date, time and place of said continued hearing shall be publicized in accordance with the Bylaw, and notice shall be sent to any person at the hearing who so requests in writing.

(6) Permits Regulating the Work

(a) Within 21 days of the close of the public hearing the Commission shall issue or deny the Permit.

(b) If the Permit is issued, it shall impose such conditions as are necessary for the protection of one or more of the interests identified in the Bylaw. The Permit shall prohibit any work or portion thereof that cannot be conditioned to protect said interests.

The Permit shall impose conditions upon work or the portion thereof that will in the judgement of the Commission, result in the removing, dredging, filling, building upon or altering an area subject to protection under the Bylaw. The Permit shall impose conditions setting limits on the quantity and quality of discharge from a point source (both closed and open channel) when said limits are necessary to protect the interests identified in the Bylaw.

(c) If the Permit is denied, it shall be for one or more of the following reasons:

1. for failure to meet the requirements of the Bylaw;
2. for failure to submit necessary information or plans requested by the Commission;
3. for failure to meet design specifications, performance

standards or other requirements in these Regulations;

4. for failure to avoid or prevent unacceptable or cumulative effects upon the wetland values protected by the Bylaw; and/or
5. where no conditions are adequate to safeguard the wetland values protected by the Bylaw.

(d) A Permit shall be valid for three years from the date of its issuance, except as allowed for maintenance dredging in the Bylaw (§37013).

(e) The Permit shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant, his agent or the owner of record.

(f) A copy of the plans describing the work and the Permit shall be kept on file by the commission and shall be available to the public at reasonable hours.

(g) Prior to the commencement of any work permitted or required by the Permit, the Permit shall be recorded in the Registry of Deeds or the Land Court for the district in which the land is located within the chain of title of the affected property. In the case of recorded land, the permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the issuing authority. If work is undertaken without the applicant first recording the Permit, the issuing authority may issue an Enforcement Order or may itself record the Permit.

(h) For good cause the Commission may revoke or modify a Permit issued under this Bylaw after public notice and public hearing, and notice to the holder of the Permit.

(i) The Commission in an appropriate case may combine the Permit or other action on an application issued under the Bylaw with the Order of Conditions issued under the Wetlands Protection Act, M.G.L. c. 131, Sec. 40.

(7) Extensions of Permits

(a) The Commission may extend a Permit by one year up to three times. Such requests must be made for each of the three years. Requests for extension shall be made to the Commission in writing at least thirty days prior to the expiration of

the Permit.

- (b) The issuing authority may deny the request for an extension and require the filing of a new Notice of Intent for the remaining work in the following circumstances:
  - 1. where no work has begun on the project except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits;
  - 2. where new information, not available at the time the Permit was issued, has become available and indicates that the Permit is not adequate to protect the interests identified in the Bylaw;
  - 3. where incomplete work is causing damage to the interests identified in the Bylaw; or
  - 4. where work has been done in violation of the Permit or these regulations.
- (c) If issued by the Conservation Commission, the Extension Permit shall be signed by a majority of the commission.
- (d) The Extension Permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the issuing authority. If work is undertaken without the applicant so recording the Extension Permit, the conservation commission may issue an Enforcement Order or may itself record the Extension Permit.

(8) Certificates of Compliance

- (a) Upon written request by the applicant, a Certificate of Compliance shall be issued by the Conservation Commission within 21 days of receipt thereof, and shall certify that the activity or portions thereof described in the Application for Permit and plans has been completed in compliance with the Permit. If issued by the Conservation Commission, the Certificate of Compliance shall be signed by a majority of the commission.
- (b) Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Conservation Commission or its agent, in the presence of the applicant or the applicant's agent.
- (c) If the conservation commission determines, after review and inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within 21 days of receipt of a request for a Certificate of Compliance,

shall be in writing and shall specify the reasons for denial.

- (d) If a project has been completed in accordance with plans approved by the Commission, a written statement by the applicant or the applicant's agent certifying substantial compliance with the plans and setting forth what deviation, if any exists from the plans approved in the Permit shall accompany the request for a Certificate of Compliance. The Commission may, at their discretion, require from a professional land surveyor or a professional engineer either written certification as to compliance or an as-built plan of the subject property.
- (e) If the Permit contains conditions which continue past the completion of the work such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.
- (f) The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the issuing authority. Upon failure of the applicant to so record, the issuing authority may record the Certificate of Compliance as appropriate.

#### **1.06 Emergencies**

- (1) Any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health or safety of the public and what agency of the Commonwealth or subdivision thereof is to perform the project or order it to be performed.
- (2) The request may be written or oral, but, if oral, must be confirmed by written notice within 24 hours of work commencement.
- (3) A majority of the Commission must certify the work as an emergency project to be performed only for the time and place certified by the Commission for the limited purpose of abating the emergency.
- (4) Within 21 days of commencement of an emergency project, a Permit application shall be filed with the Commission for review as provided in the Bylaw and in this regulation.
- (5) An emergency certification shall be issued only for the protection of public health or safety.

- (6) The time limit for performance of emergency work shall not exceed 30 days from day of certification by the Commission.

#### 1.07 Severability

The invalidity of any section of these regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

If any Court of the Commonwealth shall invalidate any provision of the Bylaw or of these regulations, the conservation commission shall promulgate additional regulations, or present to the next Town Meeting after such invalidation, amendments to the Bylaw or regulations which are designed to comply with any Court decision invalidating such provision or regulation, as the case may be.

#### 1.08 Effective Date

The effective date of these regulations shall be as of February 2, 2005. Effective dates of subsequent amendments are noted within the text. The provisions of these regulations shall apply to all work performed after those dates.

#### 1.09 Fees

The following fees shall apply to applications and documents issued under these regulations independent of the cost of advertising.

- Administrative Review - \$25
- Re-issue of any document - \$25
- Request for Determination of Applicability - \$35
- Request for Amended Order of Conditions - \$50
- Extension Permit - \$50
- Notice of Intent
  - a) Category 1 - \$50.00 per activity  
refers to activities such as an addition to an existing single family dwelling, construction of a shed, installation of a pool, resource improvement, vegetation control, septic system work, etc.
  - b) Category 2 - \$200 per activity  
refers to construction of a dwelling (including demolition), parking lot construction, beach nourishment, driveway crossing to a single family dwelling, maintenance dredging, etc.
  - c) Category 3 - \$400 per activity  
refers to projects such as commercial building construction, road or bridge construction, commercial development, etc.
  - d) Category 4 - \$2 per linear foot, total fee not less than \$50

refers to work on bulkheads, revetments, fiber roll installation, docks, piers, catwalks, pilings, floats, etc.

Any municipal project is exempt from fees.

#### 1.10 Regulations for Hiring Outside Consultants Under MGL Ch 44 § 53G

As provided by MGL Ch 44, §53G, the Chatham Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (MGL CH 131 § 40), the Chatham Wetlands Protection Bylaw (Chapter 37), the Conservation Commission Act (MGL Ch 40 § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. It is the intention of the Commission to use this authority judiciously; generally for complex applications that pose substantial impact on the Town of Chatham's natural resources and where adequate technical advice is unavailable from municipal employees.

Funds received by the Conservation Commission pursuant to these regulations shall be deposited with the Town of Chatham treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Commission without further appropriation as provided in MGL Ch 44 §53G. Expenditures from this account shall be made only in connection with the review of specific project or projects for which a consultant fee has been collected from the applicant. Unexpended funds, if any, will be returned to the applicant at the conclusion of the proceedings.

Specific consultant services may include, but are not limited to, resource area survey and delineation, analysis of impacts on protected resources areas values and functions, hydro-geologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and/or its Agent.

The Commission shall give written notice to the applicant of the selection of an outside consultant. Said notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is sent by certified mail or hand delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date the notice is given.

The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review

requires a larger expenditure than originally anticipated or if new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine the application incomplete, (except in the case of appeal). The applicant shall be sent written notice that the application is administratively incomplete and shall at the same time send notice to DEP. No additional review or action shall be taken on the permit or the request until the applicant has paid the requested fee. Failure by the applicant to pay the consultant fee specified by the Commission within the specified time period shall be cause for the Commission to deny the permit application.

The applicant may appeal the selection of the outside consultant to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. Such an appeal must be made in writing and received by the Board of Selectmen, with copy to the Commission, within ten (10) business days from the date the notice was given by the Commission requesting the consultant fee. In case of administrative appeal, the time limits for action upon the application by the Commission shall be extended for the duration of the administrative appeal.